

September 15, 1998

## **Clinton Claims on Partial-Birth Abortion *Still* Not True — Not Even ‘Legally Accurate’ Second Veto Override Vote Set for September 18**

On Thursday, September 17, 1998, the Senate will begin debate on a vote to override President Clinton's veto of H. R. 1122, the Partial-Birth Abortion Ban Act. The vote on the override will occur the following day. The House of Representatives on July 23, 1998, voted for override by a vote of 296-132 (10 more votes than needed).

This will be the second time the Senate has voted on a Clinton veto of a partial-birth abortion prohibition, and the Senate's fourth definitive vote on the issue since the ban was first passed in December 1995. Since that time, the facts of the gruesome procedure (described below) have not changed, nor have the demonstrably false assertions made by the Clinton White House in an effort to justify its continued legality.

The following provides an overview on the legislative history of the partial-birth abortion ban leading up to the current vote; a summary of the legislation; background on the procedure itself; and background on the falsity of the claims made by President Clinton in his veto message. Further details can be found in RPC Legislative Notice No. 15, the Partial-Birth Abortion Ban Act of 1997, 5/13/97.

### **Overview of Legislative History**

- H.R. 1122 passed the Senate on May 20, 1997, with amendments, by a vote of 64-36. On October 8, 1997, the House (which had originally passed the bill on March 20, 1997, by a vote of 295-136) agreed to the Senate amendments by a vote of 296-132 and sent the bill to President Clinton.
- President Clinton vetoed H.R. 1122 on October 10, 1997, and returned it to the House (which was the originating house). On July 23, 1998, the House voted to override the President's veto by a margin of 296-132 (two-thirds of those present and voting is required) and sent the veto message to the Senate. On July 27, 1998, the Senate agreed by unanimous consent to lay aside the veto message, to be called up by the Majority Leader after consultation with the Democratic Leader.

- H.R. 1122 differs only in minor detail from the "Partial-Birth Abortion Ban Act of 1995" (H.R. 1833 in the 104th Congress), which President Clinton vetoed on April 10, 1996. The veto override vote succeeded in the House (285 to 137) on September 19, 1996, but failed in the Senate on September 26 (58 to 40; the measure initially had been approved by the Senate on December 7, 1995, by a vote of 54 to 44).

### **Summary of the Partial-Birth Abortion Ban Act**

- H.R. 1122 prohibits the performance of partial-birth abortions, which are defined in the bill as abortions "in which the person performing the abortion partially vaginally delivers the living fetus before killing the fetus and completing the delivery."
- According to this definition, the prohibition established in H.R. 1122 would *not* apply to (1) abortions performed by C-section or hysterotomy (i.e., where the fetus is not extracted vaginally), nor to (2) abortions in which the fetus is killed *prior* to being moved into the birth canal.
- The person performing such an abortion would be subject to fines or imprisonment of up to two years, or both. The mother of the aborted fetus is explicitly exempted from prosecution. In addition, the person performing the abortion is liable for civil damages to the father of the aborted child and, if the mother is under 18 years old, the maternal grandparents of the child.
- The prohibition does not apply to a partial-birth abortion that is "necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury" if "no other medical procedure would suffice for that purpose."

### **Background on the Partial-Birth Abortion Procedure**

Partial-birth abortion, the procedure prohibited under H.R. 1122, is a method that is employed from approximately the mid-point in pregnancy (i.e., after about 20 weeks' gestation) up to the time of delivery. On June 16, 1995, the *Los Angeles Times* described the procedure as follows:

**"The procedure requires a physician to extract a fetus, feet first, from the womb and through the birth canal until all but its head is exposed. Then the tips of surgical [i.e., blunt curved Metzenbaum] scissors are thrust into the base of the fetus' skull, and a suction catheter is inserted through the opening and the brain is removed."**

Removal of the brain collapses the skull and completes the extraction of the fetal body. (A pointed hollow metal tube called a trochar is sometimes used instead of scissors to puncture the skull.) The main surgical advantage of the partial-birth abortion technique, as opposed to other methods that involve the intra-uterine dismemberment of the living fetus, is its relative ease

for the person performing the abortion. As Dr. W. Martin Haskell, a noted proponent and practitioner of partial-birth abortions, describes his development of the procedure:

**"D&Es ["dilation and evacuations," i.e., live intrauterine fetal dismemberments], the procedure typically used for later abortions, have always been somewhat problematic because of the toughness and development of the fetal tissues. . . . I kept doing D&Es because that was what I was comfortable with, up until 24 weeks. But they were very tough. Sometimes it was a 45-minute operation. I noticed that some of the later D&Es were very, very easy. So I asked myself why can't they all happen this way. You see the easy ones would have a foot length presentation, you'd reach up and grab the foot of the fetus, pull the fetus down and the head would hang up and then you would collapse the head and take it out. It was easy. At first, I would reach around trying to identify a lower extremity [i.e., a foot] blindly with the tip of my instrument. I'd get it right about 30-50 percent of the time. Then I said, 'Well gee, if I just put the ultrasound up there I could see it all and I wouldn't have to feel around for it.' I did that and sure enough, I found it 99 percent of the time. Kind of serendipity."**  
["2nd Trimester Abortion: An interview with W. Martin Haskell, MD," *Cincinnati Medicine*, Fall 1993]

The partial-birth procedure also lessens the chance that fetal tissue might be left behind in the mother's body. With respect to current law, it is essential that the procedure be completed *before* the fetus' head leaves the birth canal; once the fetus were completely clear of the mother's body, a live delivery would have occurred and the child would be protected by existing criminal statutes.

According to an interview with Dr. Haskell in the American Medical Association's *American Medical News* of July 5, 1993, approximately one-third of fetuses involved in this procedure "are definitely dead" before removal of the fetus, and "probably the other two-thirds are not." In testimony before the House Judiciary Subcommittee on the Constitution on June 15, 1995, Professor Robert White, Director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve University stated that fetuses within the gestational period when this procedure is performed are "fully capable of experiencing pain."

## **President Clinton's False Claims on Partial-Birth Abortion**

In his veto message to the House of October 10, 1997, President Clinton explained: "I am returning H.R. 1122 for exactly the same reasons I returned an earlier substantially identical version of this bill, H.R. 1833, last year." At the time of that earlier veto, he had justified his opposition to the bill passed by the 104th Congress because, he claimed, it did not contain an exception for when the partial-birth procedure would be medically necessary, specifically:

- In "a small number of compelling cases" (April 10, 1996, veto message, *Congressional Record*, April 15, H 3338);

- To protect the mother from “serious injury to her health” (April 10 veto message); and
- To avoid the mother’s “losing the ability to ever bear further children” (May 23, 1996, press conference).

As detailed below, President Clinton’s assertions are demonstrably false. According to reputable medical testimony — plus evidence given by prominent *practitioners* of partial-birth abortion:

- The procedure is not confined to a “small number of compelling cases” but is far more widespread than its defenders admit;
- In the vast majority of cases when the partial-birth technique is used, it is not for protection of the mother’s health but for elective (i.e., entirely non-medical) purposes; and
- It is *never* necessary to safeguard the mother’s health or fertility.

### ***Numbers of Partial-Birth Abortions***

A major point of contention between proponents and opponents of H.R. 1122 has been establishing exactly how many partial-birth abortions are performed each year. Dr. Haskell, together with another noted practitioner of the technique, Dr. James McMahon (who died in late 1995), were credited by the National Abortion Federation (a professional association of abortion providers) with the performance of 450 partial-birth abortions per year between them. In a 1992 article, Dr. Haskell referred to having performed “over 700” such abortions. Both physicians have actively promoted the partial-birth technique within the abortion industry. In general, prior to consideration of the partial-birth bill in the 104th Congress, many estimates reported in the press were based on the public claims of just these *two* prominent practitioners of the technique and the numbers they *personally* performed *per year*, without taking into account those performed by other abortionists — while supporters of the bill insisted the total number, though not known exactly, must surely be *much larger*. According to the *New York Times* of November 6, 1995, prior to the Senate’s initial consideration of the bill:

“About 13,000 of the nation’s 1.5 million abortions a year are performed after 20 weeks’ gestation. And only two doctors [i.e., Haskell and McMahon], who perform a total of about 450 of these abortions a year, have said publicly that this method is the safest and best. So most discussion of the proposed ban has been based on the assumption that the method is rarely used, and only by a small number of doctors. But the National Abortion Federation, which represents several hundred abortion providers, says that more doctors have recently reported that they sometimes use the method, which they call ‘intact D&E [i.e., dilation and evacuation].’ And since the House vote, some gynecologists at prominent hospitals have acknowledged that they often use the method in late-term abortions. ‘Of course I use it, and I’ve taught it for the past 10 years,’ said a

gynecologist at a New York teaching hospital, who spoke on condition of anonymity."

Despite such indications, groups opposed to prohibiting partial-birth abortions, along with sympathetic press reports, persisted in claiming that partial-birth abortion is rare. For example, the *New York Times* (3/28/96) reported: **"The number of procedures that meet the definition of partial birth abortion is very small, probably only 500 or 1,000 a year."**

However, during the interim between the Clinton veto and the override votes in September 1996, investigative press accounts appeared indicating that the actual number of partial-birth procedures performed in the United States was far larger than originally admitted. For example:

- As stated in the Bergen County, NJ, *The Sunday Record* (9/15/96): **"Interviews with physicians who use the method reveal that in New Jersey alone, at least 1,500 partial-birth abortions are performed each year."** [emphasis added]
- **"Another [New York] metropolitan area doctor who works outside New Jersey said he does about 260 post-20-week abortions a year, of which half are by intact D&E [i.e., partial-birth abortion]. The doctor, who is also a professor at two prestigious teaching hospitals, said he had been teaching intact D&E since 1981, and he said he knows of two former students on Long Island and two in New York City who use the procedure."** [*The Sunday Record*, 9/15/96]
- Based on these revelations, as well as the admission of abortion lobbyist Ron Fitzsimmons (for further details, see "The Ron Fitzsimmons Admission: 'I Lied'" RPC Legislative Notice No. 15, the Partial-Birth Abortion Ban Act of 1997, 5/13/97, page 7), it is now believed that the actual number of partial-birth abortions performed nationwide per year is at least in the range of 3,000 to 5,000, with only some 500 to 750 (approximately 15 percent) occurring in the third trimester [Ron Fitzsimmons, *ABC "Nightline,"* February 26, 1997]. Mr. Fitzsimmons himself characterized his lying as having **"spouted the party line"** ["Head of Abortion Group Admits Lying in Interview; 'Partial-Birth' Statements Were 'the Party Line,'" *The Washington Post*, 2/27/97] and he has called on the abortion movement to back away from **"spins"** and **"half-truths"** [*American Medical News*, 3/3/97]. A number of other organizations have made (but not retracted) claims similar to those previously made by Mr. Fitzsimmons, which he later admitted were conscious falsehoods, in defense of the procedure often referred to by its defenders as "intact dilation and evacuation" ("IDE" or "intact D&E"), "dilation and extraction" ("D&X"), or even the Orwellian "intrauterine cranial decompression" [*Los Angeles Times*, 4/2/97]. In short, the earlier misrepresentations made by Mr. Fitzsimmons were not unique but rather illustrate the sheer dishonesty that underpins the Clinton claims.

## ***Reasons for Partial-Birth Abortion***

Likewise, the President's claim that partial-birth abortion is performed only in "compelling cases" to protect the mother from "serious injury to her health" is unsupportable. On the contrary, as abortion lobbyist Fitzsimmons admitted to the *New York Times* (2/26/97), in **"the vast majority of cases, the procedure is performed on a healthy mother with a healthy fetus."** Likewise, in his 1993 interview with *American Medical News*, noted previously, Dr. Haskell had stated that with respect to his practice:

**"I'll be quite frank: most of my abortions are elective in that 20-24 week range. . . . In my particular case, probably 20 percent are for genetic reasons. And the other 80 percent are purely elective. . . ."**

Even the category of "non-elective abortions" is subject to qualification. In materials submitted to the House subcommittee, Dr. McMahon used a highly expansive definition for "non-elective" abortions performed up to 40 weeks' gestation (i.e., full term), including "maternal depression" and maternal youth ("pediatric indications"). The same materials indicated that half of the fetuses aborted at 26 weeks by Dr. McMahon were perfectly healthy; those which he classified as "flawed fetuses" included some with conditions compatible with long life, such as nine fetuses aborted using the partial-birth procedure because of a cleft lip.

There is abundant evidence that, contrary to the claims of President Clinton and his supporters, partial-birth abortions are performed overwhelmingly on normal fetuses for elective (i.e., birth control) purposes.

- **"We have an occasional amnio abnormality, but it's a minuscule amount,' said one of the doctors . . . 'Most [of the mothers] are Medicaid patients, black and white, and most are for elective, not medical, reasons: people who didn't realize, or didn't care, how far along they were.'" [Bergen County, NJ, *The Sunday Record*, 9/15/96]**
- **"It is possible — and maybe likely — that the majority of these abortions are performed on normal fetuses, not on fetuses suffering genetic or other developmental abnormalities. Furthermore, in most cases where the procedure is used, the physical health of the woman whose pregnancy is being terminated is not in jeopardy. . . . Instead, the 'typical' patients tend to be young, low-income women, often poorly educated or naive, whose reasons for waiting so long to end their pregnancy are rarely medical." [The Washington Post, 9/17/96]**

## ***Maternal Health and Fertility***

Perhaps the most emotionally charged argument used by President Clinton to justify his veto of the partial-birth abortion ban last year is the claim that a health exception is necessary to protect women from (in the President's words of May 23, 1996) being "eviscerated" or "ripped to shreds" — and "losing the ability to ever bear further children."

- This claim is roundly refuted by four specialists in OB/GYN and fetal medicine representing PHACT (Physicians' Ad Hoc Coalition for Truth), a group of over 500 doctors, mostly specialists in OB/GYN, maternal and fetal medicine, and pediatrics, including former Surgeon General C. Everett Koop: **"Contrary to what abortion activists would have us believe, partial-birth abortion is *never* medically indicated to protect a woman's health or her fertility. In fact, the opposite is true: The procedure can pose a significant and immediate threat to both the pregnant woman's health and fertility."** ["Partial-Birth Abortion Is Bad Medicine," *The Wall Street Journal*, 9/19/96; original emphasis]
- The four PHACT physicians detail the nature of that threat, including forcible dilation of the cervix ***over several days*** — which illustrates that this is ***not*** a procedure used in emergency circumstances relating to the mother's life or health. The result is "incompetent cervix," the leading cause of premature deliveries; intentionally and dangerously causing a breech delivery during the procedure; and risking injury to the mother by forcing the scissors into the child's head while it is still in her body.
- They also deny that fetal abnormality would ever indicate partial-birth abortion to safeguard maternal health or fertility: **"In some cases, when vaginal delivery is not possible, a doctor performs a Caesarian section. But in no case is it necessary to partially deliver an infant through the vagina and then kill the infant."** That is, despite the claims of President Clinton and his supporters, ending a pregnancy does not translate into the need to kill a partially delivered fetus — as opposed to completing the delivery of a live, and possibly viable, infant.

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